

FILED
MARCH 13, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

SHAHROKH MALEK,)
Plaintiff,)
v.)
MICHAEL B. MUKASEY, Attorney)
General of the United States;)
MICHAEL CHERTOFF, Secretary,)
U.S. Department of Homeland Security;)
EMILIO T. GONZALEZ, Director,)
U.S. Citizenship and Immigration Services;)
RUTH A. DOROCHOFF, Director;)
Chicago Office, U.S. Citizenship and)
Immigration Services)
Defendants.)
_____)

Civil Action No. _____
A 056 012 845

08 C 1520
JUDGE GOTTSCHALL
MAGISTRATE JUDGE COLE

COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff, Shahrokh Malek, by and through his attorney, Anvaripuor & Associates respectfully moves this Honorable Court to enter an order directing the Defendants to adjudicate and make a decision on the Plaintiff's Application for Naturalization (Form N-400). In support of his complaint, the Plaintiff states as follows:

I. JURISDICTION AND VENUE

1. This is a civil action brought pursuant to 8 U.S.C. § 1447, 28 U.S.C. §1331 and 1361, 5 U.S.C. § 701 and 28 U.S.C. §2201 *et. seq.* to redress the deprivation of rights, privileges and immunities secured to Plaintiff to compel Defendants to perform a duty Defendants owe to Plaintiff.

Jurisdiction is also conferred by 5 U.S.C. §704.

2. This action is brought to compel Defendants and those acting under them to take action on a Form N-400, Application for Naturalization, (hereafter “the Application”) in order for Plaintiff to become a Naturalized Citizen of the United States. The Application was filed with the United States Citizenship and Immigration Services on or about August 22, 2005 by the Plaintiff. (*See* Exhibit A) On September 22, 2005, the Plaintiff’s Biometrics were taken by the ASC. (*See* attached Exhibit B) Mr. Malek was interviewed by Immigration Officer Wyant on January 30, 2006 and successfully passed the English language and history and government tests. (*See* attached Exhibit C). To this day, two years after the interview, the Plaintiff still awaits the decision. Certainly more than 120 days have passed since the interview in this matter, thus vesting jurisdiction with this court under 8 U.S.C. § 1447.

3. Venue is proper under 28 U.S.C. §1391(e) because the Plaintiff resides in this district and no real property is involved in this action.

II. PARTIES

4. The Plaintiff, Shahrokh Malek is a native and citizen of Iran. He was awarded a lawful permanent resident status on July 17, 2002. His Alien number is 056 012 845.

5. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS), are charged by law with the statutory obligation to adjudicate this Application.

III. CLAIM FOR RELIEF

6. Mr. Malek's Permanent Resident Status was granted on July 17, 2002 (*See* attached Exhibit D), and he became statutorily eligible to file a Form N-400, Application for Naturalization, on July

17, 2005, three years after his grant of Permanent Resident Status under § 316(a); 8 U.S.C. § 1427(a).

7. Chicago District offices of the United States Citizenship and Immigration Services is currently processing Forms N-400 filed on July 20, 2007. (*See* attached Exhibit E). Plaintiff's application was filed on August 22, 2005 and, therefore, its processing is significantly overdue.

8. The Plaintiff has inquired about his Application on numerous occasions. In response to all these inquiries, the USCIS alleges that the applicant's "case is under security name check with the assistance of other agencies". (*See* attached Exhibit F;G). Upon information and belief, the application remains unadjudicated.

9. Defendants have willfully and unreasonably have delayed in and have refused to adjudicate the Application, thereby depriving the Plaintiff of the benefit of becoming a Naturalized U.S. Citizen.

10. Defendants owe Plaintiff a duty to adjudicate the Petition and have unreasonably failed to perform that duty.

11. Plaintiff has exhausted any administrative remedies that may exist.

WHEREFORE, Plaintiff prays that the Court:

1. Assume jurisdiction over the case and naturalize the Plaintiff under the terms of 8 USC 1447(b); or
2. Compel Defendants and those acting under them to perform their duty to adjudicate the Petition; and

Grant such other and further relief as this Court deems proper under the circumstances;

and

4. Grant Attorney's fees and costs of Court to Plaintiff under the Equal Access to Justice Act.

Respectfully submitted,

By: 
Attorney for Plaintiff

Mark A. Anvaripour
Anvaripour & Associates
180 N. LaSalle Street, Suite 2001
Chicago, IL 60601
(312) 750-0558



Receipt with Exception

NOTICE DATE
August 29, 2005

CASE TYPE

N400 Application For Naturalization

INS A#

A 056 012 845

APPLICATION NUMBER

LIN*000814512

RECEIVED DATE

August 22, 2005

PRIORITY DATE

August 22, 2005

PAGE

1 of 1

APPLICANT NAME AND MAILING ADDRESS

SHAHROKH MALEK
26 COPPERWOOD DRIVE
BUFFALO GROVE IL 60089

PAYMENT INFORMATION:

Single Application Fee: \$390.00
Total Amount Received: \$390.00
Total Balance Due: \$0.00

08 C 1520

|||||

The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):

Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.

Our records indicate your personal information is as follows:

Date of Birth: August 17, 1944
Address Where You Live: 26 COPPERWOOD DRIVE
BUFFALO GROVE IL 60089

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.

IMPORTANT NOTICE:

All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE
PO BOX 87400
LINCOLN NE 68501-

INS Customer Service Number:

(800) 375-5283

APPLICANT COPY

LIN\$000764568

JUDGE GOTTSCHALL
MAGISTRATE JUDGE COLE





Fingerprint Notification			NOTICE DATE September 07, 2005
CASE TYPE N400 Application For Naturalization			INS AF A 056 012 845
APPLICATION NUMBER LIN*000814512	RECEIVED DATE August 22, 2005	PRIORITY DATE August 22, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS SHAHROKH MALEK 26 COPPERWOOD DRIVE BUFFALO GROVE IL 60089			
APPLICANT NAME AND MAILING ADDRESS SHAHROKH MALEK 26 COPPERWOOD DRIVE BUFFALO GROVE IL 60089			
To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.			
APPLICATION SUPPORT CENTER INS WAUKEGAN 25 SOUTH GREENBAY RD. WAUKEGAN IL 60085		DATE AND TIME OF APPOINTMENT 09/22/2005 01:00 PM	
WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING: 1. THIS APPOINTMENT NOTICE and 2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.			
PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.			
REQUEST FOR RESCHEDULING Please reschedule my appointment for the next available: <input type="checkbox"/> Wednesday afternoon <input type="checkbox"/> Saturday afternoon INS cannot guarantee the day preferred, but will do so to the extent possible. Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to: INS WAUKEGAN 25 SOUTH GREENBAY RD. WAUKEGAN IL 60085			
If you have any questions regarding this notice, please call 1-800-375-5283.		APPLICANT COPY 	
WARNING! Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.			

JUDGE GOTTSCHALL
MAGISTRATE JUDGE COLE

056-012-845

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 56 012 845

On 1-20-06, you were interviewed by USCIS officer

Wyant

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/_____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.



A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

Pending Security Check.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

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JUDGE GOTTSCHALL
MAGISTRATE JUDGE COLE

Form N-652 (Rev. 01/14/05)N

C1USA0560128450SRC0223551202<<
4408176M1207312IRN<<<<<<<<7
MALEK<<SHAHROKH<<<<<<<<<<<<

MARIE MALLER, SHAHROKH

PERMANENT RESIDENT CARD

WFO-A = 056-012-845

Product Category

[illegible]

25

Scienze di Base

CVHD Expires 07/31/12

Relief Unit Since 07/17/02

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MAGISTRATE JUDGE COLE**

U.S. Citizenship and Immigration Services

Chicago IL Processing Dates

Posted February 15, 2008



The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

District Office Processing Dates for **Chicago IL** Posted February 15, 2008

Form	Form Name	Processing Timeframe:
I-131	Application for Travel Documents	November 17, 2007
I-485	Application to Register Permanent Residence or Adjust Status	August 19, 2007
I-600	Petition to Classify Orphan as an Immediate Relative	August 26, 2007
I-600A	Application for Advance Processing of Orphan Petition	August 26, 2007
I-765	Application for Employment Authorization	November 30, 2007
N-400	Application for Naturalization	July 20, 2007
N-600	Application for Certification of Citizenship	September 22, 2007

U.S. Department of Homeland Security
10 W. Jackson Boulevard
Chicago, IL 60604



U.S. Citizenship
and Immigration
Services

NOTE TO APPLICANTS REGARDING NATIONAL SECURITY CHECKS

A final decision cannot be made on any application for naturalization or adjustment of status to permanent resident until national security checks are complete and the local USCIS office receives a response.

National security checks are performed by federal agencies other than the United States Citizenship and Immigration Services (USCIS). Your local USCIS office has no control over the pace of completion of these required checks.

(F) At any given time, there are many hundreds of this office's cases pending due to national security checks. A significant portion of these checks takes more than six months to complete. At the USCIS Chicago District Office, cases with pending security checks are queried every week to ensure that those whose checks have cleared are acted on in a timely manner.

The USCIS Chicago District Office requests that you wait at least 120 days from the date of your interview before making an inquiry regarding the status of your case, if you have been advised at your interview that your security check (or name check) is pending. Your cooperation helps us to use office personnel more efficiently to complete your case and others that are pending.

USCIS thanks you for your patience and understanding in this matter.

Sincerely,

Gerard Heinauer
Acting District Director

Yahoo! Mail - apiersen@yahoo.com

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Re: A#56 012 845 - Malek Shahroka

Dear Congressman Mark Kirk,

The United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for your client has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time-period it takes for the results to be electronically submitted to USCIS and updated in our national records.

We understand your frustration in the delaying of the decision, however, in order to fulfill USCIS mission to provide immigration benefits and services to the public, we must balance our obligations to the individual applicant against our obligations to the public, as a whole. While we strive to process applications timely and fairly, we must also ensure that our policies and procedures will safeguard the public. Consequently, we have adopted background security check procedures that address a wide range of possible risk factors, requiring various levels of scrutiny based on the type of application under consideration.

Given the number of applications submitted and the significance of immigration benefits, it is inevitable that some applications will require more attention than others. USCIS relies primarily on three background check mechanisms: the Interagency Border Inspection System (IBIS) name check, the FBI fingerprint check, and the FBI name check. For the vast majority of applicants, these mechanisms allow USCIS to quickly determine whether there are any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before any decision can be made on the petition or application. USCIS does not share with applicants or their representative's information regarding the specific nature of the match or the nature or status of any investigation.

Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence. The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will

Yahoo! Mail - apiersen@yahoo.com

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be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.

Sincerely,



Ruth A. Dorochoff
District Director

RAD: DEA

Thank you for contacting USCIS Customer Service

Delete

Reply

Forward

Spam

Move...

Previous | Next | Back to Messages

Save Message Text | Full Header

Check Mail

Compose

Search Mail

Search the Web

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